

parameters which dictate how the call is to be routed” (emphasis added) The call is routed differently, based on various data such as an inlink of the call, a telephone number, a domain name, a source address, a destination address, etc. However, this all has to do with routing (switching), and it isn't defined in Rao that a call based on any one of these criteria is applicable over a domain. Indeed, “domain name” is merely an identifier, just as a telephone number is an identifier. Even if calls are routed in Rao in a particular manner based on a domain name, that still is no more than a routing or switching policy, and not a domain policy.

Moreover, Rao is a network switch (title) operating at OSI layers 2 and 3 (*see* Rao, col. 2, line 13). “Domain policy” may be relevant to a discussion of network operation, but only at a higher protocol level than OSI protocol layers 2 or 3. A patent reference that discloses a switch operating at OSI layers 2 and 3 CANNOT be disclosing Appellants’ claimed “domain policy” regardless of its usage of the term “domain.” Therefore, there really isn't any relevant domain policy being discussed, explicitly or implicitly, in Rao in the first place, regardless of its use of “domain name” as an identifier, and its use of “call policy” which relates only to call routing. There is a call policy database (Rao, col. 8, line 65) in Rao which includes call policy records which direct how the call is to be routed. But, Appellants submit, this is just a routing or switching policy at best, and not a domain policy.

(B) Appellants had included examples of effect of domain policy in its appeal brief as an explanation or clarification of domain policy, to help the Examiner distinguish it from the disclosed routing policy in Rao. “Domain policy” is recited in each of Appellants’ claims¹, although particular effects of such domain policy may not be recited in each of Appellants’ claims. The claims are interpreted in light of the specification.

¹ Authorization policy is recited in claim 14. Authorization policy results from application of, and/or is equivalent to, domain policy, as discussed in the appeal brief.

(C) In connection with Appellants' argument that the references are not properly combinable because there is no motivation to be derived from either reference to combine it with the other, the Examiner says that "One would be motivated to do so to allow proper handling of callers." This is a conclusionary statement by the Examiner. No supporting evidence is provided upon which to base this conclusion. Only upon viewing Appellants' claims first, can the Examiner arrive at this conclusion, using impermissible hindsight.

It is established law that one "cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *Ecolochem, Inc. v. Southern Cal. Edison Co.*, 227 F.3d 1361, 1371, 56 USPQ2d 1065 (Fed. Cir. 2000) (citing *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1780, 1783 (Fed. Cir. 1988)). Indeed, "[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight." *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Lil, per the Examiner's admission, does not disclose or suggest domain policy; and there is nothing that one could point to in Lil which would suggest a need to a reader of Lil to combine it with another disclosure that discloses domain policy. Similarly, Rao does not disclose domain policy in the first place as noted above, but even if it did, there is nothing that one could point to in Rao that would suggest a need to a reader of Rao, which discloses a network switch operating at protocol layers 2 and 3, to combine it with a different disclosure operating at a much higher OSI protocol layer that discloses an enhanced services platform on a local network exchange within the public telephone network.

Lil does not point to Rao. Rao does not point to Lil. The Examiner's statement "to allow proper handling of callers" is simply conclusory and merely states an advantage which becomes apparent only after a reading of Appellants' claims.

(D) The Examiner refers to column 8, line 64 through column 9, line 3, the same section in Rao to which reference was made above, to point to a "call policy record" upon which the Examiner relies to show Appellants' claimed "domain policy." The call policy record corresponds to an incoming call and includes the various parameters which dictate how the call is to be routed. This has nothing to do with domain policy. This has to do with routing or switching policy. A call may be routed through various routers to get to its ultimate destination, and these various routers may be members of different domains, depending on how the domains are defined. Thus, this call policy of Rao is not related to Appellants' domain policy.

Regarding authorization policy, it results from application of, and/or is equivalent to, domain policy, as discussed in the appeal brief.

(E) There is no reasonable expectation of success if the references were combined. There is no useful place for Rao's softswitch in Lil. Extensive re-architecting would be required before one could even begin to contemplate a marriage of these two disclosures. Appellants point out that Rao's switch existed in February 1999, according to filing data on the front page of the Rao reference, one year before the filing date of Lil. Apparently, softswitches were available when Lil filed its application. Presumably, if a softswitch were potentially useful in Lil's operation, since softswitches were known and available at that time, it would have been included within Lil's architecture, but it was not. Why? Because it was not needed or wanted. To attempt to force a combination of the two disclosures now would change the principle of

operation of Lii, at least, and successful operation is not to be expected. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)." M.P.E.P. § 2143.02.


(F) Appellants respectfully disagree with the Examiner on this point and rely on the arguments previously presented in the appeal brief.

CONCLUSION

For the reasons given above, Appellant respectfully requests that the Honorable Board reverse the final rejection of the pending claims.

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